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Sexual Harassment at Workplace: Comparative Analysis of India and Bangladesh

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ABSTRACT

Sexual harassment is the archetype of violence because it involves unwanted and inappropriate physical approaches and sexual connotations. It goes from verbal offences to physical violence. It may occur everywhere, including businesses, educational institutions, and public spaces. Sexual harassment is not unique to Bangladesh; in this era of gender-based violence, it is pervasive around the globe. Both sexual harassment perpetrators and victims might be male or female.

Despite the fact that workplace violence and harassment have been a worldwide reality for decades, there were no legally enforceable international instruments forbidding or mandating nations to adequately handle workplace violence and harassment. In Bangladesh and other South Asian nations, sexual harassment is sometimes referred to as "eve-teasing," therefore diminishing its gravity. Using a euphemism for something that is profoundly improper diminishes the gravity of the behaviour. By classifying sexual harassment as "eve-teasing," we argue that women in the same scenario are both teased and deserve to be teased. Today, both Bangladesh and India are suffering same issue. No female employee is secure, and they lack a sense of safety. There have been advances in the legislation of several nations to protect female employees from sexual harassment.

India is a liberal democracy. Article 21 of India's constitution stipulates that all citizens have the fundamental right to live with dignity. However, there is no statute that particularly addresses sexual harassment. Laws are incapable of providing victims with justice. There have been several instances taken before the supreme court of India, but none have been successful in establishing new sexual harassment statutes. In 1997, the Supreme Court attempted to establish a precedent in Vishakha's case. In this case, the Supreme Court contended that distinct statutes are necessary, but this argument did not receive the necessary consideration.

Keywords: *Women, Harrasment, Equality, Protection.*

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I. INTRODUCTION

Sexual harassment is the archetype of violence because it involves unwanted and inappropriate physical approaches and sexual connotations. It goes from verbal offences to physical violence. It may occur everywhere, including businesses, educational institutions, and public spaces. Sexual harassment is not unique to Bangladesh; in this era of gender-based violence, it is pervasive around the globe. Both sexual harassment perpetrators and victims might be male or female. Despite the fact that workplace violence and harassment have been a worldwide reality for decades, there were no legally enforceable international instruments forbidding or mandating nations to adequately handle workplace violence and harassment. In Bangladesh and other South Asian nations, sexual harassment is sometimes referred to as "eve-teasing," therefore diminishing its gravity. Using a euphemism for something that is profoundly improper diminishes the gravity of the behaviour. By classifying sexual harassment as "eve-teasing," we argue that women in the same scenario are both teased and deserve to be teased.²

Today, both Bangladesh and India are suffering same issue. No female employee is secure, and they lack a sense of safety. There have been advances in the legislation of several nations to protect female employees from sexual harassment.³

Sexual harassment stems from cultural norms and is worsened by workplace power dynamics. Changes to the law are unlikely to be successful if there is little focus placed on workplace sensitization. Workplaces must develop their own thorough rules for addressing sexual harassment. Instead of the court cobbling together panels, a system and a means of remedy should already be in place.

India is a liberal democracy. Article 21 of India's constitution stipulates that all citizens have the fundamental right to live with dignity. However, there is no statute that particularly addresses sexual harassment. Laws are incapable of providing victims with justice. There have been several instances taken before the supreme court of India, but none have been successful in establishing new sexual harassment statutes. In 1997, the Supreme Court attempted to establish a precedent in Vishakha's case.⁴ In this case, the Supreme Court contended that distinct statutes are necessary, but this argument did not receive the necessary consideration.

II. LEGISLATION

(A) Legislation in Bangladesh for Sexual Harassment at Workplace

² Sapana Pradhan-Malla, *Sexual Harassment in the workplace in Asia*, LEGAL SERVICES INDIA, www.un.org/womenwatch/daw/egm/vaw-gp2005/docs/experts/

³ Razidur Rahaman, *Sexual Harassment in Workplace in South Asia: A Comparative Study on Bangladesh, India, Nepal and Srilanka*, IOSR JOURNAL OF BUSINESS AND MANAGEMENT, <https://iosrjournals.org/iosr-jbm/papers/Vol17-issue6/Version-1/G017614957.pdf>.

⁴ Vishaka & others Vs. State of Rajasthan & others, (AIR 1997 SC 3011)

Participation of women in the working world's economies is essential to the expansion of the economies of all nations. It is possible that the empowerment of women would play a pivotal role in the effort to improve the economic condition. One of the countries still in the process of development, Bangladesh is one of the countries that is actively trying to empower women and offer them with more resources.

In 1996, women comprised 51% of the labour force, 63% of the agricultural workforce, 27% of the service sector, and 10% of the industrial workforce. In terms of sexual harassment, women are subjected to twofold risk. According to the Bangladesh National Women Lawyers Association, about ninety percent of girls aged 10 to 18 have encountered "eve-teasing," in which guys catch girls on the street and yell obscenities at them, laugh at them, or grab their clothing. Paul Subrata Malakar, a Dhaka-based representative of the NGO Plan International, stated that eve-teasing has increased since the 1980s, when more girls and women entered formal education and the workforce.⁵

In the absence of domestic legislation, international treaties and standards are to be read into the basic rights where there is no discrepancy between them. These covered the concept of sexual harassment as well as the mechanisms that were going to be put into place, such as public education, complaint procedures, and fines. Because of a variety of legislation, sexual harassment is considered to be a crime in Bangladesh. This law specifies that sexual harassment occurs when a man does this. Because of this, the individual who was just described will receive a jail term that ranges from a minimum of two years to a maximum of seven years. In addition, he will be required to pay penalties.⁶

"Whoever knowingly insults the dignity of any woman by uttering or performing anything that she is most likely to hear or see, or by violating her private in any manner, may be punished by simple imprisonment for a period not exceeding one year, a fine not exceeding one thousand dollars, or both."

(B) Legislation in India for Sexual Harassment at Workplace

When it comes to the issue of sexual harassment on the workplace, India is one of the countries in South Asia that is among the most at risk. Separate law has been created in India to protect working women from being subjected to sexual harassment in the workplace. In addition, India has a number of case statutes that protect women from being subjected to sexual harassment. In addition, the Constitution of India guarantees the right to perform one's work in an honourable manner. In the Indian Constitution, Articles 14, 15, and 21 guarantee gender equality, which

⁵ Sarjean Rehman, *Laws Regarding Sexual Harassment in Workplace*, FM Associates, <https://www.fmassociatesbd.com/laws-regarding-sexual-harassment-in-workplaces-in-bangladesh>.

⁶ "Psychological Factors in Sexual Harassment, Psychology Information Online, <http://www.psychologyinfo.com/forensic/harassment.html>.

incorporates exemption from sexual harassment and the right to work with dignity.

The phrase was not coined until the 1970s, but since it is utilised in the public domain, it has expanded enormously. It acquired numerous implications and affected distinct viewpoints over time. **Vishaka v. Rajasthan State** was the first sexual assault case in Indian legal history. The case involves the brutal gangrape of Bhanwari Devi, a social worker who tried to raise awareness about eliminating child marriage. The court resolved to seize this opportunity to construct a security system for this country's female employees, a sector in which Indian law has had enormous gaps. Since then, the Supreme Court has issued specific guidelines to protect the nation's female workers from sexual harassment and sexually motivated gender inequity. Since the Vishaka Decision, several decisions have emphasised the necessity for a strong sexual harassment legislation. In 2007, the Workplace Sexual Assault Bill was presented in Congress. India has finally, after 16 years, established a law against sexual harassment.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, is a piece of legislation in India that was enacted with the intention of protecting women from being subjected to sexual harassment while they are on the job. On September 3, 2012, the Lok Sabha gave its approval, followed by the Rajya Sabha on February 26, 2013, and finally the President of India on April 23, 2013. On December 9, 2013, the Act was finally put into force. The Act is intended to prohibit sexual harassment and took the role of the Vishakha Guidelines. The Vishaka guidelines consider sexual harassment to be any unwanted behaviour that is motivated by sexual attraction, either directly or by implication. Such behaviour constitutes sexual harassment in the workplace even if the victim really fears for his or her career or employment as a result of the harasser's actions.

Prior to the implementation of the Vishakha rules, the lady was required to file a complaint under Sections 354 and 509 of the Indian Penal Code for sexual harassment at the workplace. Sexual abuse has been a serious worry, and it must also be prioritised; it has been decided to take action to address this issue. Government, companies, employees, and women's organisations all discussed strategies to avert this threat to society. As everyone is aware, sexual assault, a kind of violence against women, is a global concern. In its international agreements and records, the international community has recognised the right of women to be free from sexual assault as a fundamental human right. Prior to the Vishakha judgement, there was no legislation in India governing this issue.

III. CONTRAST

The Supreme Court of Bangladesh discussed the landmark Indian case **Vishakha v. State of Rajasthan**,⁷ when defining sexual harassment as including a wide range of actions and

⁷ Vishakha v. State of Rajasthan, AIR 1997 SC 3011.

behaviours.

While India has had explicit statutes replacing the Vishakha principles for over five years, Bangladesh continues to see an alarming upsurge in such terrible crimes of sexual harassment but has failed to enact statutes. India's workplace harassment and discrimination rates decreased when stronger rules were enacted, proving that greater supervision is effective. It is time for Bangladesh to swiftly confront this issue and establish laws once and for all. The appropriate implementation of anti-sexual harassment legislation and ethical practises in any country may assure a woman's maximum participation in the workforce, therefore contributing to the economic success of that nation.

Recent requests from Gender Platform Bangladesh include the implementation of the "Prevention of Sexual Harassment at the Workplace Act" to ensure a workplace free of sexual harassment. It goes without saying that women's labour force participation has grown. Women are progressing with males. Women are currently employed everywhere, including in the government, the corporate sector, and educational institutions. At the same time, they face several difficulties. In certain instances, they continue to face prejudice. Women are subject to physical, emotional, and verbal sexual harassment. The rate of sexual harassment against women is on the rise and has taken on a heinous aspect.

Bangladesh faces an alarming surge in such terrible acts of sexual harassment, but has yet to enact statutory rules despite the fact that India has had such laws in place for over five years. We have yet to assure the safety of women in the job, despite the fact that, in the current period, women are breaking established gender norms by entering a formerly male-dominated field. Bangladesh's legislative framework for eradicating violence and harassment in the workplace is similarly inadequate and lacks fundamental aspects of protection and prevention. Convention No. 190, which acknowledges everyone's right to a world of work free from violence and harassment, including GBVH, is therefore a vital standard for examining the inadequacies and loopholes in the current legal framework.

In **Nilabati Behera v. State of Orissa**,⁸ Supporting the argument that a right to compensation is not foreign to the concept of enforcing a protected right, the ICCPR's Article 32 was used to show that public law remedies exist apart from the private law remedy in torts. The Indian Constitution guarantees a wide range of rights, including the right to equality for women and men in all spheres of society, and there is no reason why these international treaties and standards cannot be used to interpret these provisions. This is done in accordance with the power which is assigned to the Court under Article 32 of the Constitution.

⁸ Nilabati Behera vs. State of Orissa, 1993(2) SCC 746.

In the case of **Hira Nath Misra vs. Principal Rajendra Medical College**,⁹ 36 female students of a college complained to the principal about the misbehaviour of several male students in the ladies' hostel. In the absence of the guys, the principal's Enquiry Committee recorded the statement of the girls and declared them guilty. They were then presented with expulsion notices. This was contested by the guys on the grounds that evidence was collected without their presence and they were not permitted to cross-examine the girls. In consideration of the safety of the females, not even their names were revealed. The Supreme Court has upheld the expulsion.

In **BNWLA v. Government of Bangladesh and Others**,¹⁰ the Supreme Court of Bangladesh stated that in drafting these recommendations, the Court drew on a variety of sexual harassment cases, constitutional laws, international institutions, and foreign case law.¹¹ This Court has provided some guidelines for how to proceed with fixing the issue. In such case, every single state participated. It is unclear whether all Departments/Institutions with workers aged 50 and more, or even the vast majority of them, have formed Committees as advised in the Vishaka case.

IV. CRITICAL ANALYSIS

The majority of women fail to recognise sexual harassment and view it as banal and ordinary. Such has been the coping method employed inside. Ignoring or denying the presence of sexual harassment are the most prevalent responses women have to it. The government, employers, and workers each have duties and responsibilities for preventing sexual harassment in the workplace. The government should enact suitable regulations to safeguard female employees from sexual harassment in the workplace. Employers should take each and every complaint seriously and investigate them using the right procedures. If there is sufficient evidence, the employer must turn over the suspected perpetrator of sexual harassment to the police.

In our culture, sexual harassment and discrimination against women are increasing at an alarming rate. In both the public and private spheres, women are subject to the danger of harassment in its many manifestations. A comfortable working atmosphere and protection against sexual harassment allow an employee to work with dignity. Sexual harassment in the workplace is a violation of human rights. Sexual harassment is not commonly acknowledged in either the culture of India or Bangladesh, and as a result, it continues to be a social problem. Young women in both nations endure a frightening level of verbal and physical sexual assault in the workplace.

Although it is required to form a complaint committee at every workplace in accordance with

⁹ Hira Nath Misra Vs. Principal Rajendra Medical College, AIR 1973 SC 1260.

¹⁰ BNWLA v. Government of Bangladesh and Others, Writ Petition No. 5916 of 2008.

¹¹ Vishaka vs. State of Rajasthan, (1997) 6SCC 241.

the Vishakha standards, very few private businesses really do so, whilst the majority of government institutions only put the need on paper. It has been reported by victims of the organisations in which these committees exist that the committee members do not even have a clue of their responsibilities, powers, and duties, and as a result, it is uncommon for the victim to get justice as a result of this. Other serious problems face the organisations in which these committees exist. The employer's mentality is well ingrained, and they have an assumption that anything like this cannot happen in their business. As a result, the women's accusation results in nothing being done about it. It was common for others to make fun of her, and as a result, she is unable to obtain justice or be heard in an appropriate manner.

The case was named after the woman who was the plaintiff in the case. According to the findings of a survey that was carried out by Action Aid, over 87 percent of college students and 64.5% of working professionals are unaware of the directions. Both Bangladesh and India are active members of a variety of international fora and have demonstrated their commitment to the advancement of women's rights by ratifying some of the most important international human rights conventions. As a result, Bangladesh has made it abundantly obvious that it is committed to abolishing gender-based violence in all areas of life, as is required by its Constitution. This commitment has been proved on a worldwide scale. They should make women aware that their complaints will not be subject to ridicule or any kind of threat, and they should ask women to complain about sexual harassment if they believe that it is harming them in any way.

If an incident of this nature were to take place within the employer's establishment, the latter's primary concern should be the potential for monetary and/or reputational loss as a result of the situation. In addition, we believe that a distinct anti-sexual harassment policy that deals specifically with this matter need to be drafted because there is a need for such a policy. In its dealings with particular members of the organisation, the committee must never display any hint of partiality. If the accused is a high-ranking executive or business partner, for example, the corporation should not automatically absolve him or her of wrongdoing but should instead adopt strong disciplinary measures.¹²

As a result of the widespread prevalence of sexual harassment in the Indian workplace, it is imperative that a supporting environment be created for women workers. The government ought to pass separate laws that specifically handle this problem. In addition to this, it should acknowledge the fact that women employees make up a significant portion of India's labour force and that it is the duty of the government to protect their well-being while they are on the job.

Employers and managers should develop new tactics to shield their organisations against this

¹² Mridul Eapen, *Sexual harassment: not fitting the bill*, ECONOMIC AND POLITICAL WEEKLY, volume XLV,

menace. The emergence and mutilation of sexual harassment may be reduced to a minimum if the regulations are effectively implemented. By observing how other organisations manage sexual harassment, a company may modify its own strategy. This will lessen or eliminate hiccups resulting from this detrimental infraction. It is important for the government to acknowledge the possibility that separate laws may not be sufficient to achieve equality in gender relations; yet, a legislation that addresses sexual harassment would provide women with significant aid in their fight. Finally, we would want to state that women should no longer tolerate the status quo since now is the moment to speak up against the injustices committed against them.¹³

V. CONCLUSION

In India and Bangladesh, awareness campaigns have been performed, and business organisations have launched attempts to raise awareness of the rising problem of sexual harassment in the workplace. In Nepal and India, groups have conducted Sexual Harassment in the Workplace training classes. These seminars are intended to educate participants on the dangers of sexual harassment and how it violates women's rights to a safe workplace. The course material covers how to react to challenges when a mechanism might or might not be at your disposal. Women in Nepal have responded positively to the training because they believe they can either solve the problem on their own or, at worst, lodge a formal complaint. Bangladesh needs to pass laws that address sexual harassment in the workplace head-on.

Should be adopted a law criminalising sexual harassment with a precise definition and sanctions. Referencing international legal documents, such as those of ILO & CEDAW, to which Bangladesh and India are signatories, might address gaps in current legislation. In the absence of a clear definition of sexual harassment, it might be difficult for victims to recognise whether they are the target of a sexual insinuation. CEDAW attempted to define sexual harassment in a committee-approved generic suggestion. Sections 354 and 509 of the Penal Code, as well as Section 10 of the Women and Children Repression Prevention Act of 2000, should be changed to remove outdated terms such as "woman's modesty."

A strong foundation for an environment free from sexual harassment in the workplace may be created by the formation of a complaints committee and the implementation of an anti-sexual harassment policy. Everyone, both men and women, has to be educated and taught to identify sexual harassment, know how to respond to it when it happens, and learn how to prevent it through the adoption of proper training programmes. The training programme is the greatest approach to guarantee that your policy is properly understood and implemented. It is the finest

¹³ Anshular Baz, Sexual Harassment at Workplace, Legal Service India, <http://www.legalservicesindia.com/article/716/Sexual-Harassment-at-Workplace.html>.

venue for communicating with employees in a non-threatening climate of mutual understanding what acceptable and unacceptable behaviour is.

The implementation of a procedure does not indicate sexual harassment in the workplace. Prevention is always preferable than treatment, and being proactive is always advantageous. Along with performance, employers should also closely monitor any changes in workers' behaviour habits. If you are a union member, speak with your union representative. There are steps the Union may take to address sexual harassment. The objective is to make trade Union members aware of the problem and to foster an environment that discourages sexual harassment and where victims feel comfortable seeking support from the union if it occurs.

The right to equality and employment is impeded by sexual harassment. Sexual harassment laws may not be a permanent solution, but they are an essential starting step. However, a collection of laws without appropriate execution would not accomplish the intended result. Therefore, the Bangladeshi government must immediately establish legislation with effective punishments to protect women from sexual harassment in public and the workplace. After perpetrating such a horrific crime, it must be guaranteed that no culprit will enjoy impunity. It is conceivable that sexual harassment might not limit a woman's pursuit of equality, education, or job.

A healthy work atmosphere devoid of violence and harassment would not only benefit the employees, but also the employers, since it would lead to greater production. As a result, ratification of ILO Convention 190 is necessary, even though methods for amending current laws, establishing new laws, and strengthening the ability of the major implementing players can be studied and reviewed. Ratification of C190 would unquestionably create a solid platform for broader reform initiatives to establish an effective legal and regulatory framework addressing GBVH in the workplace.
